CASE NO. 08-1491

IN THE
SUPREME COURT OF THE UNITED STATES

CARL R. WAGENKNECHT JR.
Petitioner,
V.
William W. Wilkins [Richard A. Levin],
TAX COMMISSIONER OF OHIO
Respondent.

On Petition For Writ Of Certiorari
To THE SUPREME COURT OF OHIO

PETITION FOR REHEARING

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2009

PETITION FOR REHEARING OF
PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

Petitioner, Carl R. Wagenknecht Jr., respectfully petitions for a rehearing on his writ of certiorari to review judgment of The Supreme Court of Ohio.

OPINIONS BELOW

The October 5, 2009 order of the Supreme Court of the United States provided in the Appendix at page 9.

JURISDICTION

This petition is timely filed within twenty five days of the date of the October 5, 2009 order, per Rule 44.2, Rules of the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION FOR REHEARING OF THE WRIT

On September 29, 2009, one week before the Supreme Court of the United States issued its order denying petitioner's writ of certiorari, during the 128th General Assembly of the Ohio Legislature, Regular Session, for 2009-2010, the Senate adopted with The House of Representatives concurring S.C.R. 13 STATE SOVEREIGNTY The CONCURRENT RESOLUTION was "To claim sovereignty over certain powers pursuant to the Tenth Amendment to the Constitution of the United Sates of America, to notify Congress to limit and end certain mandates, and to insist that federal legislation contravening the Tenth Amendment be prohibited or repealed. (Appendix p.10) State Sovereignty and the Tenth Amendment is at the core of petitioner's writ of certiorari.

Other states that have reaffirmed their sovereignty are Alaska, Idaho, North Dakota, South Dakota, Oklahoma, Louisiana, and Tennessee. In addition, another twenty six states have introduced state sovereignty resolutions that are pending. Hence, over half of the several states are involved in a movement to maintain a state's sovereignty.

To justify S.C.R. 13 the Ohio Senate cited eleven facts which include the following:

(1), The Tenth Amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people";

(2) The Tenth Amendment defines the total scope of federal power as being that specifically granted to the federal government by the Constitution of the United States and no more;

(3) The scope of power defined by the Tenth Amendment signifies that the federal government was created by the states specifically to be an agent of the states;

(4) Today, in 2009, the states are often treated as agents of the federal government;

(5) Many federal laws directly contravene the Tenth Amendment to the Constitution of the United States;

(6) We believe in the importance of all levels of the government working together to serve the citizens of our country, by respecting the constitutional provisions that properly delineate the authority of the federal, state, and local governments;

(7) The Tenth Amendment assures that we, the people of the United States and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp;

(8) Article IV, Section 4 of the Constitution of the United States, states in part, "The United

States shall guarantee to every State in this Union a Republican Form of Government," and the Ninth Amendment to the Constitution of the United States states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people";

(9) The United States Supreme Court ruled in *New York V. United Sta*tes, 505 U.S. 144 (1992), that Congress may not simply commandeer the legislative and regulator processes of the states by compelling them to enact and enforce regulatory programs;

(10) The United States Supreme Court, in *Printz v. United States/ Mack v. United States,* 521 U.S. 898 (1997), reaffirmed that the Constitution of the United States established a system of "dual sovereignty" that retains "a residuary and inviolable sovereignty" by the states...."; and

(11) A number of proposals by the previous administrations, some now pending proposals by the present administration, and some proposals by Congress may further violate the Tenth Amendment restriction on the scope of the federal power. (Appendix pp. 10-13)

Based upon the foregoing the Ohio Senate concluded by declaring that it be :

"RESOLVED, That the State of Ohio hereby acknowledges and reaffirms its residuary and inviolable sovereignty under the Tenth Amendment to the Constitution of the United

States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States; and be it further

RESOLVED, That this resolution serves as notice to the federal government as agents of the states, to end federal mandates that are beyond the scope of the constitutionally delegated powers; and be it further

RESOLVED, That all compulsory federal legislation that directs to comply under threat of civil or criminal penalty or sanction or that requires states to enact legislation or lose federal funding be prohibited or repealed." (Appendix.p.14)

Each of the before mentioned facts are at the core and foundation of petitioner's writ. The Internal Revenue Service acts as if a sovereign state (Ohio) is its agent and the Internal Revenue Code directly contravenes the Tenth Amendment to the Constitution of the United States as implemented. Furthermore, the Internal Revenue Service is allowed to usurp constitutional rights reserved to the people and several States pursuant to the Tenth Amendment which includes but is not limited to establishing jurisdiction.

Moreover, the General Assembly's Concurrent Resolution establishes that the results of the action of the Tax Commissioner of Ohio, The Ohio Board of Tax Appeals, and the Supreme Court

of Ohio are inconsistent with the legislative intent as explained in S.C.R.13.

In addition members of the Ohio Judiciary and the Ohio Bar Association are addressing the 10th Amendment issue.

The Honorable Judge Eugene A. Lucci, Lake County, Ohio, Court of Common Pleas stated in a published article titled "The 10th Amendment under fire" for the Ohio State Bar Association that "Ultimate sovereignty over the federal government (and the state governments) rests with the people, not the states. **As such, state politicians cannot waive federalism in exchange for federal economic incentives or threats.** (Appendix p.17) This is precisely what has occurred in this case as explained in the writ.

Judge Lucci continued that:

> "The 10th Amendment is possibly the most important ever written into the constitution, yet it is nearly never enforced. Federalism, and other safeguards are built into our lawmaking process to prevent willful encroachment on our constitutional rights. We must restore the balance of liberty in this nation, that is, the balance of power between the states and the federal government...
>
> 'It is the duty of all Americans to diligently and jealously guard the U.S. Constitution and all of its guarantees...

> 'We must return to our federalist form of government. The time is now to bring needed political pressure on Congress, the president and the Courts, and force them to preserve, protect, defend, and obey the Constitution." (Appendix. pp. 18-19)

Ohio's State Motto is "With God, all things are possible". The United States National Motto is "In God we Trust." I pray that this Honorable Court return America to the country our founding fathers had envisioned.

CONCLUSION

For the foregoing reasons this Petition for Rehearing of petitioner's Petition for Writ of Certiorari should be granted.

Respectfully submitted

Carl R. Wagenknecht Jr.
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Munroe Falls, Ohio 44262
Telephone: 330-388-8968

CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL

I, Petitioner Carl R. Wagenknecht Jr., hereby certify that this Petition For Rehearing is restricted to grounds that are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. This Petition is presented in good faith and not for delay.

Carl R. Wagenknecht Jr.
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APPENDIX

Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 5, 2009

Mr. Carl R. Wagenknecht Jr.
174 Cheltenham Lane
Munroe Falls, OH 44262

Re: Carl R. Wagenknecht, Jr.
v. Richard A. Levin, Ohio Tax Commissioner
No. 08-1491

Dear Mr. Wagenknecht:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely
/s/ William K. Suter
William K. Suter, Clerk

As Adopted by the Senate

128th General Assembly
Regular Session
2009-2010

S.C.R. No.13

Senators Grendell, Faber
Cosponsors: Senators Gibbs, Buehrer, Cates, Hughes, Schuler, Schuring, Carey, Goodman, Harris, Husted, Niehaus, Patton, Schaffer, Seitz, Wagoner, Widener, Jones

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CONCURRENT RESOLUTION

To claim sovereignty over certain powers pursuant to the Tenth Amendment to the Constitution of the United Sates of America, to notify Congress to limit and end certain mandates, and to insist that federal legislation contravening the Tenth Amendment be prohibited or repealed.

BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF REPRESENTATIVES CONCURRING):

WHEREAS, The Tenth Amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are

reserved to the States respectively, or to the people"; and

WHEREAS, The Tenth Amendment defines the total scope of federal power as being that specifically granted to the federal government by the Constitution of the United States and no more; and

WHEREAS, The scope of power defined by the Tenth Amendment signifies that the federal government was created by the states specifically to be an agent of the states; and

WHEREAS, Today, in 2009, the states are often treated as agents of the federal government; and

WHEREAS, Many federal laws directly contravene the Tenth Amendment to the Constitution of the United States; and

WHEREAS, We believe in the importance of all levels of the government working together to serve the citizens of our country, by respecting the constitutional provisions that properly delineate the authority of the federal, state, and local governments; and

WHEREAS, The Tenth Amendment assures that we, the people of the United States and each sovereign state in the Union of States, now have,

and have always had, rights the federal government may not usurp; and

WHEREAS, Article IV, Section 4 of the Constitution of the United States, states in part, "The United States shall guarantee to every State in this Union a Republican Form of Government," and the Ninth Amendment to the Constitution of the United States states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"; and

WHEREAS, The United States Supreme Court ruled in *New York V. United States*, 505 U.S. 144 (1992), that Congress may not simply commandeer the legislative and regulator processes of the states by compelling them to enact and enforce regulatory programs; and

WHEREAS, the United States Supreme Court, in *Printz v. United States/ Mack v. United States*, 521 U.S. 898 (1997), reaffirmed that the Constitution of the United States established a system of "dual sovereignty" that retains "a residuary and inviolable sovereignty" by the states. The majority of the United States Supreme Court noted in that case (521 U.S. 898, 921-922):

"As [President] Madison expressed it: '[T]he local or municipal authorities form distinct and independent portions of the supremacy, no more

subject, within their respective spheres, to the general authority that the general authority is subject to them, within its own sphere.' The Federalist No. 39, at 245.

This separation of the two spheres is one of the Constitution's structural protections of liberty, 'Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.'... To quote [President] Madison once again:

'In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence, a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.' The federalist No. 51, at 323; and

WHEREAS, A number of proposals by previous administrations, some now pending proposals by the present administration, and some proposals by Congress may further violate the Tenth Amendment restriction on the scope of federal power; now therefore be it

RESOLVED, That the State of Ohio hereby acknowledges and reaffirms its residuary and inviolable sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States; and be it further

RESOLVED, That this resolution serves as notice to the federal government as agents of the states, to end federal mandates that are beyond the scope of the constitutionally delegated powers; and be it further

RESOLVED, That all compulsory federal legislation that directs to comply under threat of civil or criminal penalty or sanction or that requires states to enact legislation or lose federal funding be prohibited or repealed; and be it further

RESOLVED, That the Clerk of the Senate transmit authenticated copies of this resolution to the President of the United States, the President Pro Tempore of the United States Senate, the Speaker of the United States House of Representatives and the President of the Senate of each state's legislature, and each member of the Ohio Congressional delegation

The 10th Amendment under Fire.

An informal poll of colleagues, friends and acquaintances suggests that the 10th Amendment is long-forgotten. Yet, the 10th Amendment according to Thomas Jefferson, is "the foundation of the Constitution."

The 10th Amendment to the U.S. Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It was included in the Bill of Rights to further define the balance of power between the federal government and the states. No other issue dominated the deliberations of the founders as much as this. British oppression had made the founding fathers fearful of unchecked centralized power. The founders were concerned that the new federal government might seek to exercise powers not granted, and the states might not be able to excise fully their reserved powers. Ratified in 1791, the 10th Amendment embodies the general principles of federalism in a republican form of government.

Federalism is the constitutional division of powers between the national and state governments and is regarded as one of America's most valuable contributions to political science. It is the

constitutional equilibrium- a tension rather than a cooperation-between the general and the state governments. According to Alexander Hamilton, the balance of the tension "forms a double security to the people. ... Indeed, the [the federal and state governments] will both be prevented from overpassing their constitutional limits by (the) certain rivalship which will ever subsist between them." Federalism was fashioned by the American people for the benefit of the individuals and of the people as a whole. It is fundamental to liberty.

We are a union of sovereign states. The people created the federal government to be their agent for certain enumerated purposes only and the state government their agent for other purposes, as outlined in the federal and the several state constitutions. All else, the people retain.

The 10th Amendment, in conjunction with the Ninth Amendment, was a pronouncement of the principle of popular sovereignty. The Ninth Amendment was not written to create new rights or to recognize old ones. It was designed to work with the 10th Amendment to preserve the Constitution's other restrictions on federal power.

According to James Madison, the father of the Constitution, "The powers delegated to the federal government are few and defined. Those which are to remain are numerous and indefinite. The former will be exercised principally on external objects, as

war, peace, negotiation, and foreign commerce. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concerns the lives, liberties, and properties of the people."

As Thomas Jefferson said, the states are not subordinate to the national government, but rather the two are "coordinate departments of one simple and integral whole." The federal government was created by the states specifically to be an agent of the states, not vice versa.

According to Justice Sandra Day O'Connor: "The Constitution does not protect the sovereignty of States for the benefit of the States or state governments as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state government's for the protection of individuals. State sovereignty is just not just an end in itself: "Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power."

Ultimate sovereignty over the federal government (and the state governments) rests with the people, not the states. As such, state politicians cannot waive federalism in exchange for federal economic incentives or threats.

This political system of federalism worked well until around the beginning of the 20th century. State sovereignty markedly eroded under presidents, congresses and courts comprised of both major political parties, enabled by an uninformed and apathetic electorate.

That erosion has exponentially accelerated in the last two decades. Extreme spending programs, bailouts, the states being threatened and forced to accept federal stimulus dollars, the accelerated creation of money out of thin air by the Federal Reserve, unfunded federal mandates, the nationalization of banks and other corporations, and universal health care, are examples of the continued buildup of power within the federal government at the expense of the states and the people.

As the central government usurps ever increasing powers at the expense of the states and the people, our form of government becomes less federal and more national. The evil is "nationalism," not federalism. Justice O'Connor feared, "Congress will nibble away state sovereignty , bit by bit , until someday essentially nothing is left but a gutted shell." Lord Acton once said: "Power tends to corrupt, and absolute power corrupts absolutely." The concentration of all power in a central government will absolutely corrupt that government and its political operatives.

The 10th Amendment is possibly the most important ever written into the Constitution, yet it is nearly never enforced. Federalism, and other safeguards, are built into our lawmaking process to prevent willful encroachment on our constitutional rights. We must restore the balance of liberty in this nation, that is, the balance of power between the states and the federal government.

What action can states or the people take? The last time the states asserted nullification of federal laws was 1832, and the tension between the states and the federal government ultimately resulted in the Civil War. Hopefully, history will have taught us something and the issues this nation now face will be addressed peacefully before those forces become so extreme no other choice is possible but violent conflict.

It is the duty of all Americans to diligent and jealously guard the U.S. Constitution and all its guarantees. According to Alexander Hamilton in *The Federalist,* No. 16, having established the Constitution, the people are its natural guardians. George Washington said that government is a force that 'never for a moment should be left to irresponsible action." The force of the people at the ballot box is required to hold elected officials to their oaths of office to uphold and obey the Constitution. But voting is not enough. Americans must be informed of how we are being represented, vocalize our will and dismay to our elected

representatives, and be ready to remove from office those who would tread on the very foundation of our nation. All Americans should be concerned that the 10th Amendment is ignored by the federal government, which has assumed additional powers not granted to it by the Constitution.

We must return to our federalist form of government. The time is now to bring needed political pressure on Congress, the president and the courts, and force them to preserve, protect, defend, and obey the Constitution."

By Judge Eugene A. Lucci, Lake County Court of Common Pleas

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